



DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Chapter VII

[Docket No. 220204-0041]

RIN: 0694-XC086

Request for Public Comments on the Section 232 Exclusions Process

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Request for public comments.

SUMMARY: The Bureau of Industry and Security (BIS) is hereby seeking public comments regarding the Section 232 exclusions process. A presidential proclamation (Adjusting Imports of Steel into the United States), published on January 3, 2022, directed the Secretary of Commerce to seek public comment on the Section 232 exclusions process, including the responsiveness of the exclusions process to market demand and enhanced consultation with U.S. firms and labor organizations.

DATES: The due date for filing comments is [INSERT DATE 45 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: *Submissions:* All written comments on this request must be filed through the Federal eRulemaking Portal: <https://www.regulations.gov>. To submit comments via <https://www.regulations.gov>, enter the docket number BIS-2021-0042 on the home page and click “Search.” The site will provide a search results page listing all documents associated with this docket. Find a reference to this document and click the button entitled “Comment.” (For

further information on using <https://www.regulations.gov>, please consult the resources provided on the website by clicking on “FAQ”).

FOR FURTHER INFORMATION CONTACT: Erika Maynard by telephone at 202-482-5642 or by email at Steel232@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

Presidential Proclamations 10327 (87 FR 1) and 10328 (87 FR 11) published on January 3, 2022, implemented an understanding reached between the United States and the European Union including the establishment of tariff rate quotas for steel and aluminum articles imported from the European Union member countries. Proclamation 10328 also directed the Secretary of Commerce to seek public comment on the Section 232 exclusions process, including the responsiveness of the exclusions process to market demand and enhanced consultation with U.S. firms and labor organizations.

Since March 19, 2018, Commerce has published five interim final rules that established and made various revisions to the Section 232 exclusions process, as well as a Notice of Inquiry seeking public comment on certain aspects of the Section 232 exclusions process.

On March 19, 2018, Commerce issued an interim final rule, *Requirements for Submissions Requesting Exclusions from the Remedies Instituted in Presidential Proclamations Adjusting Imports of Steel into the United States and Adjusting Imports of Aluminum into the United States; and the filing of Objections to Submitted Exclusion Requests for Steel and Aluminum* (83 FR 12106), laying out procedures for the Section 232 exclusions process.

On September 11, 2018, Commerce issued a second interim final rule, *Submissions of Exclusion Requests and Objections to Submitted Requests for Steel and Aluminum* (83 FR

46026), which revised the two supplements added by the March 19 rule with revisions designed to further ensure a transparent, fair, and efficient exclusions process.

On June 10, 2019, Commerce issued a third interim final rule, *Implementation of New Commerce Section 232 Exclusions Portal* (84 FR 26751), that revised the two supplements added by the March 19 and September 11 rules to grant the public the ability to submit new exclusion requests through the Section 232 Exclusions Portal while still allowing the opportunity for public comment on the portal.

On May 26, 2020, Commerce issued a notice of inquiry with request for comment, *Notice of Inquiry Regarding the Exclusions process for Section 232 Steel and Aluminum Import Tariffs and Quotas* (85 FR 31441), that sought public comment on the appropriateness of the information requested and considered in applying the exclusion criteria and the efficiency and transparency of the process employed.

On December 14, 2020, Commerce issued a fourth interim final rule, *Implementation of New Commerce Section 232 Exclusions Portal* (85 FR 81060), which established General Approved Exclusions (GAEs) to reduce the number of exclusion requests for products consistently found not to be produced in the United States, reducing the submission burden on both industry and the Section 232 exclusions process. The December 14, 2020, Interim Final Rule identified 123 GAEs that had never received an objection via the Section 232 exclusions process. GAEs are available to all requestors for steel and aluminum products imported under 10-Digit Harmonized Tariff Schedule of the United States classifications without quantity limit or expiration date.

On December 9, 2021, BIS subsequently suspended 30 GAEs in its fifth Interim Final Rule (86 FR 70003) on the Section 232 Exclusions process because some exclusion requests subsequently received objections under the associated HTSUS Classifications.

Exclusions process

As of January 30, 2022, BIS has processed over 382,000 exclusion requests and has rejected or made determinations on more than 369,000 requests. Approximately seventy percent of exclusion requests do not receive objections. The most recent average processing time for exclusion requests that do not receive objections is 43 days. The most recent average processing time for exclusion requests that receive objections is 98 days. Less than ten percent of the volume of steel (about eight percent) and aluminum (about seven percent) articles granted exclusions is utilized with the articles being imported into the United States.

BIS seeks public comment on the Section 232 exclusions process. In particular, as directed in Proclamation 10327, BIS seeks public comment on the responsiveness of the exclusions process to market demand and enhanced consultation with U.S. firms and labor organizations.

BIS also welcomes comment on more specific aspects of the Section 232 exclusions process, including: potential changes to the associated forms and required information; the request, objection, rebuttal, and surrebuttal process; the standards of review; General Approved Exclusions; and the overall transparency of the process. Specific topics include:

- 1) how to reduce the volume of submission errors and rejected filings in the Section 232 Exclusions Portal;
- 2) how to address the time for processing of exclusion requests, including but not limited to reducing length or type of attachments;
- 3) requiring public summaries of any confidential business information in exclusion requests and objections, similar to the existing requirement for rebuttal and surrebuttals;
- 4) requiring public disclosure of delivery times on the Exclusion Request and Objection Forms;
- 5) requiring recent (i.e., from the last quarter or 90 days) evidence supporting claims made in a Request or Objection;

- 6) streamlining the online forms or otherwise reducing administrative burden; and
- 7) assessing the General Approved Exclusions' (GAEs) criteria and identification of specific products.

Commenters are encouraged to identify which of these particular issues their comments are related to. Commenters are requested to provide information supporting their stance on that issue.

Requirements for Written Comments

The <https://www.regulations.gov> website allows users to provide comments by filling in a "Type Comment" field or by attaching a document using an "Upload File" field. BIS prefers that comments be provided in an attached document. BIS prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If the submission is in an application format other than Microsoft Word or Adobe Acrobat, please indicate the name of the application in the "Type Comment" field. Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter within the comments. Similarly, to the extent possible please include any exhibits, annexes, or other attachments in the same file, so that the submission consists of one instead of multiple files. Comments will be placed in the docket and open to public inspection, except information determined to be confidential. Comments may be viewed on <https://www.regulations.gov> by entering docket number BIS-2021-0042 in the search field on the home page.

All filers should name their files using the name of the person or entity submitting the comments. Communications from agencies of the United States Government will not be made available for public inspection.

Material submitted by members of the public that is properly marked as business confidential information with a valid statutory basis for confidentiality and which is accepted as such by BIS will not be disclosed publicly. Guidance on submitting business confidential

information is as follows: anyone submitting business confidential information should clearly identify the business confidential portion at the time of submission, include a statement justifying nondisclosure and referring to the specific legal authority claimed with the submission, and provide a non-confidential version of the submission which will be placed in the public file on <https://www.regulations.gov>. For comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters “BC”. Any page containing business confidential information must be clearly marked “BUSINESS CONFIDENTIAL” on the top of that page. The file name of the non-confidential version should begin with the character “P”. The non-confidential version must be clearly marked “PUBLIC” on the top of the first page. The “BC” and “P” should be followed by the name of the person or entity submitting the comments or rebuttal comments.

Matthew S. Borman,

Deputy Assistant Secretary

for Export Administration.